CANUCK LAW

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Canada’s Bill C-46: Police Can Demand Breath Sample — 2 Hours Later

(Changes to Criminal Code, which put onus on drivers to prove they weren’t drinking 2 hours ago)

CLICK HERE, for the full text of the bill, which received Royal Assent and is now law.

Here Is Original Legislation

Operation while impaired

253 (1) Every one commits an offence who operates a motor vehicle or vessel or operates or assists in the operation of an aircraft or of railway equipment or has the care or control of a motor

vehicle, vessel, aircraft or railway equipment, whether it is in motion or not,

(a) while the person's ability to operate the vehicle, vessel, aircraft or railway equipment is impaired by alcohol or a drug; or

(b) having consumed alcohol in such a quantity that the concentration in the person's blood exceeds eighty milligrams of alcohol in one hundred millilitres of blood.

Marginal note:

For greater certainty
(2) For greater certainty, the reference to impairment by alcohol or a drug in paragraph (1)(a) includes impairment by a combination of alcohol and a drug.
R.S., 1985, c. C-46, s. 253; R.S., 1985, c. 27 (1st Supp.), s. 36, c. 32 (4th Supp.), s. 59;

This is reasonable enough. Let's see what it looks like after the changes

Rationale Behind This Bill

SUMMARY

Part 1 amends the provisions of the Criminal Code that deal with offences and procedures relating to drug-impaired driving. Among other things, the amendments

(a) enact new criminal offences for driving with a blood drug concentration that is equal to or higher than the permitted concentration;
(b) authorize the Governor in Council to establish blood drug concentrations; and
(c) authorize peace officers who suspect a driver has a drug in their body to demand that the driver provide a sample of a bodily substance for analysis by drug screening equipment that is approved by the Attorney General of Canada.

Part 2 repeals the provisions of the Criminal Code that deal with offences and procedures relating to conveyances, including those provisions enacted by Part 1, and replaces them with provisions in a new Part of the Criminal Code that, among other things,

(a) re-enact and modernize offences and procedures relating to conveyances;

(b) authorize mandatory roadside screening for alcohol;

(c) establish the requirements to prove a person's blood alcohol concentration; and

(d) increase certain maximum penalties and certain minimum fines.

Part 3 contains coordinating amendments and the coming into force provision.

How Criminal Code Now Reads

Operation while impaired

253 (1) Every one commits an offence who operates a motor vehicle or vessel or operates or assists in the operation of an aircraft or of railway equipment or has the care or control of a motor vehicle, vessel, aircraft or railway equipment, whether it is in motion or not,

(a) while the person's ability to operate the vehicle, vessel, aircraft or railway equipment is impaired by alcohol or a drug; or

(b) having consumed alcohol in such a quantity that the concentration in the person's blood exceeds eighty milligrams of alcohol in one hundred millilitres of blood.

Marginal note:

For greater certainty
(2) For greater certainty, the reference to impairment by alcohol or a drug in paragraph (1)(a) includes impairment by a combination of alcohol and a drug.
Marginal note:

Operation while impaired — blood drug concentration

(3) Subject to subsection (4), everyone commits an offence who has within two hours after ceasing to operate a motor vehicle or vessel or after ceasing to operate or to assist in the operation of an aircraft or of railway equipment or after ceasing to have the care or control of a motor vehicle, vessel, aircraft or

railway equipment

(a) a blood drug concentration that is equal to or exceeds the blood drug concentration for the drug that is prescribed by regulation;

(b) a blood drug concentration that is equal to or exceeds the blood drug concentration for the drug that is prescribed by regulation and that is less than the concentration prescribed for the purposes of paragraph (a); or

(c) a blood alcohol concentration and a blood drug concentration that is equal to or exceeds the blood alcohol concentration and the blood drug concentration for the drug that are prescribed by regulation for instances where alcohol and that drug are combined.

Marginal note:

Exception
(4) No person commits an offence under subsection (3) if

(a) they consumed the drug or the alcohol or both after ceasing to operate a motor vehicle or vessel, or after ceasing to operate or assist in the operation of an aircraft or railway equipment or after ceasing to have the care or control of a motor vehicle, a vessel, an aircraft or railway equipment; and

(b) after ceasing the activities described in paragraph (a), they had no reasonable expectation that they would be required to provide a sample of a bodily substance.

R.S., 1985, c. C-46, s. 253; R.S., 1985, c. 27 (1st Supp.), s. 36, c. 32 (4th Supp.), s. 59; 2008, c. 6, s. 18;

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(3) Subject to subsection (4), everyone commits an offence who has within two hours after ceasing to operate a motor vehicle or vessel or after ceasing to operate or to assist in the operation of an aircraft or of railway equipment or after ceasing to have

the care or control of a motor vehicle, vessel, aircraft or railway equipment

Within 2 hours of driving, if they consume alcohol…. What the hell?

The burden would now be on the person to prove they weren't drinking 2 hours ago.

This new law, will almost certainly face court/constitutional challenges. While being (perhaps) well meaning, is too broad, too easy to abuse, and evades basic principles like:
1/ presumption of innocence
2/ probable cause needed

We will keep an eye on it.

CANADA, CANADIAN BILLS, CONSTITUTIONAL, CRIMINAL, TRANSPORTATION